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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,197	10/10/2000	Carl C. Kah III	P/3426-7 RE	6102

2352 7590 09/23/2002

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EXAMINER

MORRIS, LESLEY D.

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 09/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/686,197	Applicant(s) KAH, CARL C.	
	Examiner Lesley D Morris	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 and 21 is/are allowed.
- 6) ☐ Claim(s) 1, 4-15, 20, 22-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Reexamination Certificate and Supplemental Declaration are acknowledged and have been placed of record.
2. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
3. Claims 1, 4-15, 20, and 22-30 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

During the prosecution of application 08/405033 (Patent 5,826,797) an amendment was filed August 8, 1996 adding the following limitation to independent claim 1 and including such limitation in independent claim 12: "sealing means surrounding the discharge end of a water passage formed in said nozzle housing; said sealing means including a seal member...".

According to Applicant's arguments accompanying this amendment, this change occurred to more specifically define the seal of the instant invention from the prior art. Since this limitation

Art Unit: 3752

was added in response to a rejection of the claims, the removal of such limitation is considered to be recapture.

During the prosecution of application 08/405033 (Patent 5,826,797) an amendment was filed January 15, 1997 adding the following limitation to independent claim 1: "means for retaining said nozzle selection sleeve in place". The next action was a Notice of Allowability. Since this limitation was added in response to a rejection of the claims, the removal of such limitation is considered to be recapture even though that limitation is not specifically mentioned by Applicant or the examiner.

During the prosecution of application 08/405033 (Patent 5,826,797) an amendment was filed August 8, 1996, that added new claims 23-26 that were said to be limited to the combination of the nozzle housing and riser where the nozzle selection is mounted to surround the nozzle housing to rotate therewith and relative thereto. Such combination was deemed to make the claims allowable. New claims 22-30 in this reissue application are deemed to be broader than patented claims 16-19 (which relate to the claims that were numbered 23-26 during the prosecution of application 08/405033) because they do not call for the nozzle selection to surround the nozzle housing and riser. Since this limitation was added in response to a rejection of the claims and deemed to be allowable, the removal of such limitation is considered to be recapture.

Allowable Subject Matter

4. Claims 16-19 are allowed.

Conclusion

5. Applicant's arguments filed May 24, 2002, have been fully considered but they are not persuasive. As Applicant points out, the statement is contained in the Remarks section of the August 8, 1996, amendment in parent application "the claims have been amended to more definitely define this element (the seal) which clearly distinguishes over Ballister". Thus, it was admitted on the record that the claim language was specifically changed to amend around d the art of record. Such a change points to the inclusion of broader language at this time being recapture. Applicant points out in the Remarks of this reconsideration on page 4, last paragraph, that the "unnecessarily limiting "means plus function" language is merely being removed. That statement itself points to a broadening of the claim language. As for claims 22-30, these claims are indeed deemed to be broader in scope than patent claims 16-19 to which they correspond. Patented claims 16-19 were specifically presented in parent application 08/405033 as claims 23-26 in response to the fact that the prior art did not show a combination of the nozzle housing and riser where the nozzle selection is mounted to surround the nozzle housing to rotate therewith and relative thereto. In view of the lack of showing by the prior art, such limitations were deemed allowable. To now attempt to remove the limitation that the nozzle selection surround the nozzle housing and riser is an attempt at recapture.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3752

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lesley D Morris whose telephone number is (703) 308 0629. The examiner can normally be reached on Monday-Thursday (7:30-4:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308 2087. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872 9302 for regular communications and (703) 872 9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0861.



Lesley D Morris
Primary Examiner
Art Unit 3752

LDM
August 26, 2002